IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 186 OF 2005

Ashok B.Bhayani & others. ... Appellants.

Versus.

Mohammad Aslam Ramzan Shaikh. ... Respondent.

Shri A.Y.Sakhare with Shri Mishore Shetty for the Appellants.

Shri Anil Singh with Shri D.R.Shah for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 15th February, 2005.

P.C.:

1. Admit. The Respondent waives service. The challenge is to the order dated 3rd February 2005 by which the learned trial Judge declined to grant ad-interim relief in favour of the Appellants/Plaintiffs.

2. The grievance of the Appellants is that the Respondent is preventing the entry of persons and vehicles to the suit premises as a result of which the business of the Appellants has been affected. Shri Sakhare, the learned Senior Counsel appearing for the Appellants invited my attention to the averments made in the plaint wherein it is alleged that other persons having business in the same compound are treated differently and the Respondent is not obstructing entry of the vehicles to their respective premises.

3. Shri Anil Singh, the learned Counsel appearing for the Respondent on instructions stated that without prejudice to the rights and contentions of the Respondent in the pending Notice of Motion and in the pending suit, till the Notice of Motion is heard, the Respondent will not obstruct the entry of the Appellants, their staff members and their visitors and will also permit the Appellants to bring their vehicles and trucks in the compound on every day only between 7.00 p.m. to 8.00 p.m.

4. Considering the fact that the Notice of Motion is pending and is made returnable on 14th February 2005, in my view the statement made by Shri Singh, if accepted, will offer sufficient protection. Accordingly the statement is accepted.

5. In this view of the matter, the following order is passed:

i) Without prejudice to the rights and contentions of both the parties in the pending Suit and the Notice of Motion, the Respondent will permit entry of the Appellants, their staff members and visitors in the compound through out the day and will also permit the Appellants to bring in their trucks and other vehicles every

day only between 7.00 p.m. and 8.00 p.m. till the final disposal of the Notice of Motion.

ii) The Respondent will file his affidavit-in-reply to the Notice of Motion within ten days from today and the Appellants will file their rejoinder, if any, within a period of seven days from the date of filing of the reply.

iii) The learned trial Judge will dispose of the Notice of Motion as expeditiously as possible and in any event on or before 28th March 2005.

iv) All contentions of the parties in the Notice of Motion are expressly kept open.

v) The Appeal is disposed of in the above terms with no order as to costs.

vi) The parties to act on an authenticated copy of the order.

Judge.